

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MICHAEL DUANE SMITH,)	Case No. 05-70467
)	
Plaintiff.)	Arthur J. Tarnow
)	District Judge
v.)	
)	R. Steven Whalen
CITY OF MOUNT CLEMENS, et al.)	Magistrate Judge
)	
Defendants.)	

**ORDER ADOPTING REPORT AND RECOMMENDATION [DE 36], GRANTING IN
PART DEFENDANTS' MOTION TO DISMISS [DE 22], AND SUBSTITUTING THE
CITY OF MOUNT CLEMENS AS DEFENDANT**

Plaintiff, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §§ 1983, 1985, and 1990 against Defendants the City of Mount Clemens, the Mount Clemens Police Department, and Officer Steven Andrews. Before the Court is Defendants' motion to dismiss [DE 22], filed under Fed. R. Civ. P. 12(b)(6). Defendants argue that the Mount Clemens Police Department is not a proper party defendant. The Court referred the motion to the magistrate judge for a report and recommendation. The magistrate judge has filed a report and recommendation recommending that Defendants' motion to dismiss be granted in part, and that the complaint be construed, and the case caption amended, to substitute the City of Mount Clemens as Defendant. The Court agrees with the conclusions reached by the magistrate judge. Therefore,

IT IS HEREBY ORDERED that Defendants' motion to dismiss [DE 22] is GRANTED IN PART.

IT IS FURTHER ORDERED that Plaintiffs' claims against the Mount Clemens Police Department are DISMISSED.

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IT IS FURTHER ORDERED that Plaintiff's complaint shall be construed, and the case caption shall be amended, to substitute the City of Mount Clemens as Defendant.

SO ORDERED

s/Arthur J. Tarnow
Arthur J. Tarnow
United States District Judge

Dated: February 6, 2006

I hereby certify that a copy of the foregoing document was served upon counsel of record on February 6, 2006, by electronic and/or ordinary mail.

s/Theresa E. Taylor
Case Manager